



Multistate Tax Commission

Resolution Adopting a Uniformity Provision for a Proposed Model Statute Requiring Compilation of State Tax Return Data

Whereas, one of the statutory objectives of the Multistate Tax Commission is to “facilitate proper determination of State and local tax liability of multistate taxpayers”; and

Whereas, the marketing and employment of tax sheltering devices and strategies for business income has increased dramatically over the years, and has created a significant enforcement problem for state tax agencies; and

Whereas, at the direction of the Executive Committee, the Uniformity Committee developed a uniformity proposal on a Model Statute for Reportable Transactions and Inconsistent Filing Positions; and

Whereas, at the direction of the Executive Committee and pursuant to Art. VII of the Multistate Tax Compact, public hearings were held in September 2005 in Washington, D.C.; and

Whereas, the Hearing Officer filed a Preliminary Hearing Officer’s Report with the Executive Committee in November, 2005, recommending amendments to the proposal to reflect public comments, including an amendment to substitute a “51 state spreadsheet” filing requirement for the “inconsistent filing positions” filing requirement; and

Whereas, the Hearing Officer filed a Final Hearing Officer’s Report in May, 2006 recommending additional amendments to the proposal to reflect public comment, including a reiteration of the recommendation to substitute a “51 state spreadsheet” requirement for the “inconsistent filing positions” filing requirement; and

Whereas, in May, 2006, the Executive Committee adopted the recommendations of the Hearing Officer, including the recommendation to substitute a “51 state spreadsheet” requirement for the “inconsistent filing positions” requirement, referred the proposal favorably to the Commission, and directed Commission staff to work with interested parties to develop further amendments to the “51 state spreadsheet” requirement to enhance efficiency and minimize administrative burdens, for consideration by the full Commission in August, 2006;

Whereas, After several teleconferences with interested parties, staff recommended amendments to the statute, one of which required changing the name of the draft to the Reportable Transactions and Compilation of State Return Data statute; and

Whereas, pursuant to the authorization of the Executive Committee on June 15, 2006, the survey of the affected Member States required by Bylaw 7 of the Multistate Tax Commission Bylaws was conducted; and

Whereas, a majority of the affected Member States indicated that they would consider adopting the proposal if the Multistate Tax Commission recommends it as a uniformity proposal to the States; and

Whereas, in August, 2006, at its annual business meeting, the Commission adopted staff's proposed amendments, and then amended the draft statute to divide it into two parts, a statute on Reportable Transactions and a statute on Compilation of State Tax Return Data; and

Whereas, in August, 2006, the proposal on Compilation of State Tax Return Data received a majority vote of Compact members, but such vote did not reflect 60% of the Compact member states' population, and the Commission referred the proposal to the Executive Committee for reconsideration; and

Whereas, in September, 2006, the Executive Committee reconsidered the Compilation of State Tax Return Data proposal, made one additional amendment, and re-referred the amended proposal to the Commission; and

Whereas, Commission finds that tax administrators and taxpayers alike would benefit from greater interstate uniformity, clarity and fairness by the adoption of the Model Compilation of State Tax Return Data Statute as a uniformity proposal; and

Whereas, the Commission finds that the Model Compilation of State Tax Return Data Statute uniformity proposal represents a conceptually sound and administrable uniformity measure;

NOW THEREFORE, BE IT RESOLVED, that the Model Compilation of State Tax Return Data Statute uniformity proposal as attached hereto as Exhibit A, is hereby adopted as a uniformity recommendation of the Multistate Tax Commission.

Adopted this 7th day of September, 2006, by the Multistate Tax Commission.

Joan Wagnon, Chair

Joe Huddleston, Executive
Director

Exhibit A

Multistate Tax Commission

Model Uniform Statute on Compilation of State Tax Return Data

1. Definitions. For purposes of this Act:

A. "Business activity" means any activity conducted in a state that gives rise to gross income or an expense reflected in the taxpayer's federal income tax return or income tax return of any state, or the use (or availability for use) of property in the state.

B. "State" means a state of the United States, and includes the District of Columbia.

C. "Income tax state" means any state that imposes a tax on, according to, or measured by income.

D. "Business income" means the total income (or loss) subject to apportionment.

E. "Nonbusiness income" means income (or loss) subject to allocation to a specific state or states.

F. "Apportionment percentage" means the percentage formula used to assign a portion of the business income of the taxpayer or the combined reporting group of which the taxpayer is a member to an income tax state.

G. "Apportionment factor" means any component ratio used in the apportionment percentage used to apportion business income, such as a property factor, payroll factor, or a sales factor.

H. "Allocation" means assignment of income to one or more income tax states by means other than apportionment.

I. "Combined reporting" means a method of determining business income and apportionment that takes into account the business income and apportionment factors of more than a single corporation, and for purposes of this section includes a consolidated return.

2. Taxpayer Responsibility for Filing Compilation of State Tax Return Data.

A. Compilation and Filing Required. A taxpayer that conducts business activity in this state and one or more other states, or is a member of a combined reporting group that conducts business activity in this state and one or more other states, shall compile the information described by Section 2.B and file, in the form

and manner required by Section 2.C, state tax return data as reported on its tax returns filed in this and all other income tax states with respect to whether a filing is required, business income, nonbusiness income, apportionment, and combined reporting.

B. Information Required to Be Compiled and Filed. For each income tax state in which a taxpayer or a member of a combined reporting group of which a taxpayer is a member has business activity, the following information shall be compiled and filed:

- i. Whether the taxpayer filed in that state.
- ii. The business income of the taxpayer, or of the taxpayer's combined reporting group, reported to that state.
- iii. The total nonbusiness income of the taxpayer, or the total nonbusiness income of each member of the taxpayer's combined reporting group.
- iv. The total nonbusiness income of the taxpayer, or the total nonbusiness income of each member of the taxpayer's combined reporting group, allocable to that state.
- v. For each of the apportionment factors used to determine the apportionment percentage, the dollar amount of the numerator and the denominator of the ratio used in that factor.
- vi. The apportionment percentage used to apportion income subject to taxation in that state.
- vii. The dollar amount of business income apportioned to that state.
- viii. For those states that use combined reporting to apportion income, for each combined reporting group of which the taxpayer is a member, a list of all corporations whose business income was included in business income of the combined reporting group.
- ix. Such other information relating to the determination of business income, nonbusiness income, or the apportionment or allocation of that income as the Director, by regulation, shall require.

C. Time and Manner of Filing.

- i. The compilation of state tax return data required by this Section 2 shall be filed, for any tax year to which the requirements apply, within 180 days of the filing of the original federal income tax return and any amended [State] income tax returns exclusive of federal changes.
- ii. (a) Such compilation shall be filed in the form and manner required by the Director and consistent with the format developed and maintained for such filing by the Multistate Tax Commission pursuant to Multistate Tax Commission Resolution 06-01.
(b) In lieu of the requirements of Section 2.C.ii.(a), a taxpayer may elect to file a copy of each income tax return filed in each income tax state in which the taxpayer, or a member of a combined reporting group of which the taxpayer is a member, has business activity.

D. Effective Date. The provisions of this Section 2 are effective for tax years beginning on and after January 1, 2009.

3. Retention and Provision of Records.

A. Retention and Provision of Records Required. A taxpayer shall retain a copy of its filings of [State] schedule [apportionment schedules identifier] and of the equivalent schedule filed by the taxpayer [or a member of the taxpayer's combined reporting group] in such other state or states in which the taxpayer [or the taxpayer's combined reporting group] conducted business activity; and shall, within 60 days of written request, or within such additional time as the Director may grant upon written request for extension, provide a copy of such schedules to the Director. Information required to be retained under this Section 3. shall be retained for that period of time during which the taxpayer's income tax liability to this state for that tax year may be subject to adjustment, including all periods in which additional income taxes or penalties may be assessed, or during which a protest, appeal or lawsuit is pending with respect to [State] income tax.

B. Effective Date. The provisions of this Section 3 shall be effective [upon the date of enactment of this act] and shall apply to information associated with any return due on or after the date two years before the enactment of this Act. Provided however, during the course of an audit investigation, the Director may, following the effective date of this Act, require provision of such information as may be in possession of the taxpayer [or a member of the taxpayer's combined reporting group] for any tax year for which the statute of limitations on assessment has not expired.

4. Penalties Related to Failure to File, Retain or Provide Information Regarding State Tax Return Data.

A. Imposition and Amount.

i. A taxpayer that fails to file, retain or provide any information with respect to state tax return data as required by Section 2 and 3 of this Act and Department rules and regulation, shall be subject to penalty in an amount determined under Section 4.A.ii., in addition to any other applicable penalties.

ii. (a) For failure to file a compilation of state tax return data as required pursuant to Section 2, the amount of the penalty shall be the greater of \$10,000 or 0.25 percent of the amount of net income properly apportioned and allocated to this State.

(b) For failure to provide information required to be retained under Section 3 within 60 days of a request by the Director, or within such additional time as the Director may allow by extension, there shall be assessed a penalty in the amount of \$[X]. An additional penalty in the amount of \$[Y] shall be assessed with respect to each additional 30 days thereafter during which the information is not provided. A taxpayer that has not retained the information required under Section 3, shall, after

submitting an affidavit that such information does not exist, be subject to a penalty in the amount of \$[Z] in lieu of additional 30 day penalties.

B. Assessment Date. Penalty imposed under Section 4.A.ii.(a) shall be deemed assessed on the due date of the filing required pursuant to Section 2 and Department rules and regulations. The penalty imposed under Section 4.A.ii.(b) shall be deemed assessed on the 60th day following a request by the director, and, if applicable, every 30 days thereafter for which taxpayer fails to provide the information required to be retained pursuant to Section 3.

C. Waiver.

i. The Director, in his or her sole discretion, may waive or abate all or any portion of any penalty imposed by this Section 4 with respect to any violation if rescinding the penalty would promote compliance with the requirements of this Act and effective tax administration.

ii. Notwithstanding any other law or rule of law, any determination by the Director under this subdivision may not be reviewed in any judicial proceeding.

D. Effective Date. Penalty imposed under this Section 4 shall apply to any failure to file, retain or provide any information required pursuant to Section 2 or 3, with respect to any tax year ending on or after the effective date of this Act.

5. Extension of Statute of Limitations for Assessments Associated with Non-Filing.

If a taxpayer fails to file all information required under Section 2 of this Act and Department rules and regulations with respect to state tax return data, an assessment and notice of deficiency may be issued not later than [twice the standard SOL] after the tax return was due or filed, whichever is later, with respect to which such filing of state tax return data was required. Extension of the statute of limitations under this Section 5 is limited to extension for purpose of assessment of a tax deficiency, penalty and interest resulting from an application of the proper tax treatment with respect to information that was not filed pursuant to Section 2 and that was not reported in the same or similar manner in a tax return filed with another state.